

Senate Bill No. 201

CHAPTER 36

An act to amend Sections 15400, 15405, 15406, 15406.5, and 15409 of, and to add Sections 54.5 and 15008 to, the Fish and Game Code, and to amend Section 30411 of the Public Resources Code, relating to aquaculture.

[Approved by Governor May 26, 2006. Filed with
Secretary of State May 26, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 201, Simitian. Marine finfish aquaculture: leases.

(1) Existing law authorizes the Fish and Game Commission to lease state water bottoms to any person for aquaculture, and authorizes the commission to adopt regulations governing the terms of the leases. Existing law prohibits state water bottoms from being leased, unless the commission determines that the lease is in the public interest.

This bill would prohibit a person from engaging in marine finfish aquaculture, as defined, in state waters without a lease from the commission. The bill would require leases and regulations adopted by the commission for marine finfish aquaculture to meet certain standards. The bill would establish maximum initial and renewal terms for those leases.

(2) Existing law requires the restoration of an aquaculture lease site upon the termination of the lease.

The bill would require the commission to require financial assurances of each lessee to ensure that restoration is performed, and would make marine finfish aquaculture lessees responsible for damage caused by their operations, as determined by the commission.

(3) The California Coastal Act requires the Department of Fish and Game, in consultation with the Aquaculture Development Committee, to prepare programmatic environmental impact reports for existing and potential commercial aquaculture operations in both coastal and inland areas of the state if certain conditions are met.

This bill would delete that requirement from the act, and, instead, modify provisions relating to aquaculture to include that requirement. The bill would further require that if a final programmatic environmental impact report is prepared pursuant to that requirement for coastal marine finfish aquaculture projects approved by the commission, the report provide a framework for managing marine finfish aquaculture in a sustainable manner that adequately considers specified environmental factors.

(4) The provisions of the bill would be known as the Sustainable Oceans Act.

(5) Because this bill creates a new crime, it would impose a state-mandated local program.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. This bill shall be known, and may be cited, as the Sustainable Oceans Act.

SEC. 2. Section 54.5 is added to the Fish and Game Code, to read:

54.5. "Marine finfish aquaculture" means the propagation, cultivation, or maintenance of finfish species in the waters of the Pacific Ocean that are regulated by this state.

SEC. 3. Section 15008 is added to the Fish and Game Code, to read:

15008. (a) The department shall, in consultation with the Aquaculture Development Committee, prepare programmatic environmental impact reports for existing and potential commercial aquaculture operations in both coastal and inland areas of the state if both of the following conditions are met:

(1) Funds are appropriated to the department for this purpose.

(2) Matching funds are provided by the aquaculture industry. For the purpose of this section, "matching funds" include, but are not limited to, any funds expended by the aquaculture industry before January 1, 2006, for the preparation of a programmatic environmental impact report.

(b) If the final programmatic environmental impact report is prepared pursuant to subdivision (a) for coastal marine finfish aquaculture projects and approved by the commission under the California Environmental Quality Act set forth in Division 13 (commencing with Section 21000) of the Public Resources Code, the report shall provide a framework for managing marine finfish aquaculture in an environmentally sustainable manner that, at a minimum, adequately considers all of the following factors:

(1) Appropriate areas for siting marine finfish aquaculture operations to avoid adverse impacts, and minimize any unavoidable impacts, on user groups, public trust values, and the marine environment.

(2) The effects on sensitive ocean and coastal habitats.

(3) The effects on marine ecosystems, commercial and recreational fishing, and other important ocean uses.

(4) The effects on other plant and animal species, especially species protected or recovering under state and federal law.

(5) The effects of the use of chemical and biological products and pollutants and nutrient wastes on human health and the marine environment.

- (6) The effects of interactions with marine mammals and birds.
- (7) The cumulative effects of a number of similar finfish aquaculture projects on the ability of the marine environment to support ecologically significant flora and fauna.
- (8) The effects of feed, fish meal, and fish oil on marine ecosystems.
- (9) The effects of escaped fish on wild fish stocks and the marine environment.

(10) The design of facilities and farming practices so as to avoid adverse environmental impacts, and to minimize any unavoidable impacts.

SEC. 4. Section 15400 of the Fish and Game Code is amended to read:

15400. (a) Except as prohibited by Section 15007, the commission may lease state water bottoms or the water column to any person for aquaculture, including, but not limited to, marine finfish aquaculture. Upon appropriation of funds for that purpose, or if funds are otherwise available, the commission shall adopt regulations governing the terms of the leases, after consulting with affected stakeholders in a public process. No state leases shall be issued, unless the commission determines that the lease is in the public interest in a public hearing conducted in a fair and transparent manner, with notice and comment, in accordance with commission procedures. Leases issued, and regulations adopted, pursuant to this section shall not be construed to be fishery management plans.

(b) A person shall not engage in marine finfish aquaculture in ocean waters within the jurisdiction of the state without a lease from the commission. Leases and regulations adopted by the commission for marine finfish aquaculture shall meet, but are not limited to, all of the following standards:

(1) The lease site is considered appropriate for marine finfish aquaculture in the programmatic environmental impact report if prepared and approved by the commission pursuant to Section 15008.

(2) A lease shall not unreasonably interfere with fishing or other uses or public trust values, unreasonably disrupt wildlife and marine habitats, or unreasonably harm the ability of the marine environment to support ecologically significant flora and fauna. A lease shall not have significant adverse cumulative impacts.

(3) To reduce adverse effects on global ocean ecosystems, the use of fish meal and fish oil shall be minimized. Where feasible, alternatives to fish meal and fish oil, or fish meal and fish oil made from seafood harvesting byproducts, shall be utilized, taking into account factors that include, but need not be limited to, the nutritional needs of the fish being raised and the availability of alternative ingredients.

(4) Lessees shall establish best management practices, approved by the commission, for each lease site. Approved best management practices shall include a regular monitoring, reporting, and site inspection program that requires at least annual monitoring of lease sites to ensure that the operations are in compliance with best management practices related to fish disease, escapement, and environmental stewardship, and that operations are meeting the requirements of this section. The commission

may remove fish stocks, close facilities, or terminate the lease if it finds that the lessee is not in compliance with best management practices, that the lessee's activities have damaged or are damaging the marine environment, or that the lessee is not in compliance with this section. The commission shall take immediate remedial action to avoid or eliminate significant damage, or the threat of significant damage, to the marine environment.

(5) Before issuance of the lease, the lessee shall provide baseline benthic habitat and community assessments of the proposed lease site to the applicable regional water quality control board or the State Water Resources Control Board, and shall monitor the benthic habitat and community during the operation of the lease in a manner determined by the regional board or the State Water Resources Control Board. The regional board and the State Water Resources Control Board may establish and impose reasonable permit fees to pay for the costs of administering and conducting the assessment and monitoring program.

(6) Finfish numbers and density shall be limited to what can be safely raised while protecting the marine environment, as specified by the terms of the lease, subject to review and amendment by the commission.

(7) The use of all drugs, chemicals, and antibiotics, and amounts used and applied, shall be minimized. All drugs, therapeutic substances, and antibiotics shall be used and applied only as approved by the United States Food and Drug Administration for marine finfish aquaculture. The lessee shall report that use and application to the commission on a regular schedule, as determined by the commission, but no less than annually, that shall be included in the terms of the lease. The commission shall review those reports on a regular basis and at least annually.

(8) The commission shall require all farmed fish to be marked, tagged, or otherwise identified as belonging to the lessee in a manner determined appropriate by the commission, unless the commission determines that identifying farmed fish is unnecessary for protecting wild fish stocks, the marine environment, or other ocean uses.

(9) All facilities and operations shall be designed to prevent the escape of farmed fish into the marine environment and to withstand severe weather conditions and marine accidents. The lessee shall maintain records on all escapes in a manner determined by the commission. In the event of more than de minimis escapement, the number of escaped fish and the circumstances surrounding the incident shall be reported immediately to the commission, and the lessee shall be responsible for damages to the marine environment caused by those escaped fish, as determined by the commission.

(10) The lessee shall, at a minimum, meet all applicable requirements imposed by the State Water Resources Control Board and the regional water quality control boards, and shall prevent discharges to the maximum extent possible. Monitoring and testing of water quality shall be required on a regular basis as deemed appropriate by the State Water Resources Control Board or the regional water quality control boards. All inspection

and monitoring reports and other records, and all data on the discharge of chemical and biological pollutants shall be kept on file and available for public review.

(c) If a restoration or enhancement plan is submitted to, and approved by, the commission, and that plan, among other things, provides for monitoring and protecting the benthic habitat, the prevention of pollution, and the prevention of adverse impacts on wild fish stocks from disease, parasites, and genetic alterations, subdivision (b) shall not apply to any of the following:

(1) Artificial propagation, rearing, and stocking projects for the purpose of recovery, restoration, or enhancement of native fish stocks carried out under either of the following:

(A) A scientific collecting or research permit issued by the department.

(B) The California Ocean Resources Enhancement and Hatchery Program, as set forth in Article 8 (commencing with Section 6590) of Chapter 5 of Part 1 of Division 6, for the enhancement of white sea bass.

(2) Nonprofit hatcheries and nonprofit artificial propagation projects operated by, or on behalf of, licensed commercial or sport fishermen and fisherwomen for the purpose of recovery, restoration, or enhancement of California's native marine fish populations, pursuant to Chapter 8 (commencing with Section 6900) of Part 1 of Division 6.

(d) Nothing in this section shall be construed to limit or expand the application of any other state law or regulation pertaining to marine finfish aquaculture conducted within the ocean waters under the jurisdiction of this state.

SEC. 5. Section 15405 of the Fish and Game Code is amended to read:

15405. (a) Except as specified in subdivision (b), no initial term of a state water bottom lease shall exceed 25 years.

(b) The initial term of a state water bottom lease for marine finfish aquaculture shall not exceed 10 years.

SEC. 6. Section 15406 of the Fish and Game Code is amended to read:

15406. (a) Each state water bottom lease shall specify a period prior to expiration when renewal of the lease may be requested by the lessee. If during this period the lessee is still actively engaged in aquaculture, as determined by the commission, the lessee shall have a prior right to renew the lease on terms agreed upon between the commission and the lessee. If terms are not agreed upon, the commission shall advertise for bids on the lease. If a request for renewal is not made by the lessee, the commission shall advertise for bids on the lease. The commission shall consider bids only from aquaculturists registered pursuant to Section 15101.

(b) Notwithstanding subdivision (a), with respect to any lease of state water bottoms in effect on January 1, 1983, the lessee shall have a prior right to renew the lease. If the lessee does not renew the lease, the commission shall advertise for bids on the lease. The commission shall consider bids only from aquaculturists registered pursuant to Section 15101.

(c) Except as specified in subdivision (d), a lease may be renewed for additional periods not to exceed 25 years each.

(d) A lease for marine finfish aquaculture may be renewed for additional periods not to exceed five years each.

SEC. 7. Section 15406.5 of the Fish and Game Code is amended to read:

15406.5. (a) Except as specified in subdivision (b), the commission shall award water bottom leases to the highest responsible bidder, if the bid meets or exceeds the minimum annual rent established by the commission, which shall not be less than two dollars (\$2) per acre, for all species cultivated, unless the acreage applied for is 10 acres or less, in which case the minimum acceptable rent shall be ten dollars (\$10) per acre. The annual rent for any lease in effect on January 1, 1983, for the cultivation of oysters shall be one dollar (\$1) per acre until the expiration thereof. The commission may reject any or all bids for the lease of state water bottoms if it deems the rejection to be in the public interest.

(b) Fees for marine finfish aquaculture leases shall, at a minimum, be sufficient to pay for the costs of administering the marine finfish leasing program, and for monitoring and enforcing the terms of the leases.

SEC. 8. Section 15409 of the Fish and Game Code is amended to read:

15409. (a) Upon termination of a lease, for any reason, all structures shall be removed at the lessee's expense from the leasehold, and the area shall be restored to its original condition. If the lessee fails to remove the structures, the state may remove them and the lessee shall pay the removal costs incurred.

(b) The commission shall require financial assurances of each marine finfish aquaculture lessee to ensure that restoration is performed to the satisfaction of the commission. Financial assurances may take the form of surety bonds executed by an admitted surety insurer, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the commission, as it determines are available and adequate to ensure the lease site is restored pursuant to this section.

(c) Marine finfish aquaculture lessees shall be responsible for any damages caused by their operations, as determined by the commission, including, but not limited to, reimbursement for any costs for natural resource damage assessment.

(d) Nothing in this section limits the state in pursuing additional remedies authorized by law.

SEC. 9. Section 30411 of the Public Resources Code is amended to read:

30411. (a) The Department of Fish and Game and the Fish and Game Commission are the principal state agencies responsible for the establishment and control of wildlife and fishery management programs and the commission shall not establish or impose any controls with respect thereto that duplicate or exceed regulatory controls established by these agencies pursuant to specific statutory requirements or authorization.

(b) The Department of Fish and Game, in consultation with the commission and the Department of Boating and Waterways, may study degraded wetlands and identify those which can most feasibly be restored in conjunction with development of a boating facility as provided in subdivision (a) of Section 30233. Any study conducted under this subdivision shall include consideration of all of the following:

(1) Whether the wetland is so severely degraded and its natural processes so substantially impaired that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities.

(2) Whether a substantial portion of the degraded wetland, but in no event less than 75 percent, can be restored and maintained as a highly productive wetland in conjunction with a boating facilities project.

(3) Whether restoration of the wetland's natural values, including its biological productivity and wildlife habitat features, can most feasibly be achieved and maintained in conjunction with a boating facility or whether there are other feasible ways to achieve these values.

(c) The Legislature finds and declares that salt water or brackish water aquaculture is a coastal-dependent use which should be encouraged to augment food supplies and to further the policies set forth in Chapter 4 (commencing with Section 825) of Division 1. The Department of Fish and Game may identify coastal sites it determines to be appropriate for aquaculture facilities. If the department identifies these sites, it shall transmit information identifying the sites to the commission and the relevant local government agency. The commission, and where appropriate, local governments, shall, consistent with the coastal planning requirements of this division, provide for as many coastal sites identified by the Department of Fish and Game for any uses that are consistent with the policies of Chapter 3 (commencing with Section 30200) of this division.

(d) Any agency of the state owning or managing land in the coastal zone for public purposes shall be an active participant in the selection of suitable sites for aquaculture facilities and shall make the land available for use in aquaculture when feasible and consistent with other policies of this division and other provisions of law.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.